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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/565,439

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EXAMINER

BYRD, LATRICE CHENELL

ART UNIT

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3782

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/565,439	Applicant(s) GHINI ET AL.	
	Examiner LATRICE BYRD	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36,40-50,54,55,59-67,71 and 73-78 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36,40-50,54,55,59-67,71 and 73-78 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/2/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 54 is objected to because of the following informalities: "transverse entend" and "further transverse extend" in lines 11 and 16 appear to have typographical errors. For the purpose of examination, "extend" will be construed as "extent." Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 54, 59, 60 and 77 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. In line 11 of claim 54, it is not understood which first and second zones have a transverse extent being measured. Further, it is unclear what axis along which the longitudinal panel extends as identified in line 12. The longitudinal panel extends in several directions, to include longitudinally and transversely. Line 14 recites the limitation "said longitudinal axis." There is insufficient antecedent basis for this limitation in the claim.
5. Claim 59 recites "a length substantially the same as a further length of said greater panel". However, it is not understood which greater panel is being referred to

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(the first greater panel or the second greater panel). Applicant's Remarks state on page 10 the claim was amended to identify "said greater panel" as "the first greater panel," however, the claim still reads "said greater panel."

6. Claim 60 recites the limitation "said longitudinal crease" in line 2. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 77 recites the limitation "from one said gap to another said gap" in line 3. It is unclear what other gap is being identified.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 36, 40-45, 49, 71, 73-76 and 78 are rejected under 35 U.S.C. 102(b) as being anticipated by Rous (USPN 3,722,783).

10. In re claim 36, Rous discloses a stiff packet with a hinged lid for cigarettes, wherein said packet comprises a containing body closed at the top by a lid hinged (20) on the containing body and said lid is rotationally movable between a closed position and an open position, and

wherein said packet is delimited by a wall arrangement comprising a substantially flat front wall (10), a substantially flat rear wall (12) and a pair of shaped side walls (14,16) that protrudes towards the exterior of said container, each shaped side wall

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being connected to said front wall along a first edge, and to said rear wall along a second edge, each shaped side wall comprising an outer shaped panel (16) attached to an inner shaped panel (14),

wherein said packet comprises a stiffening element (22) arranged to stiffen said shaped side walls, wherein said stiffening element comprises a substantially flat stiffening wall extending from said first edge to said second edge, said stiffening element being spaced from the corresponding shaped side wall and having a length substantially the same as a longitudinal dimension of said shaped side wall,

said length and said longitudinal dimension being measured parallel to said first edge, such that said front wall, said rear wall and said stiffening walls define an empty space which corresponds to the shape of a composition of cigarettes to be introduced inside the packet and said packet further comprises a gap between each shaped side wall and its corresponding stiffening wall.

11. In re claim 40, Rous discloses a packet comprising an anchoring element (16b) arranged to anchor said stiffening wall to a supporting wall (10) adjacent to said shaped side wall.

12. In re claim 41, Rous discloses a packet wherein said anchoring element comprises an anchoring wall adjacent to said shaped side wall.

13. In re claim 42, Rous discloses a packet wherein said anchoring wall has a longitudinal extent measured parallel to said first edge substantially the same as said length of said stiffening wall.

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14. In re claim 43, Rous discloses a packet wherein said anchoring wall has a substantially flat shape and is fixed to a flat portion of said supporting wall.

15. In re claim 44, Rous discloses a packet wherein said anchoring wall is glued to said supporting wall.

16. In re claim 45, Rous discloses a packet wherein said anchoring wall is rotated by approximately 90° in relation to said stiffening wall.

17. In re claim 49, Rous discloses a packet wherein each shaped side wall comprises a first flat wall and a second flat wall that intersect each other along a common edge.

18. In re claim 71, Rous discloses a packet wherein each shaped side wall comprises at least a convex portion.

19. In re claim 73, Rous discloses a container delimited by a wall arrangement comprising a front wall (10), a rear wall (12) and a pair of side walls (14,16), each side wall being connected to said front wall along a first edge, and to said rear wall along a second edge, each side wall comprising an outer panel (16) attached to an inner panel (14), said container comprising a stiffening element (22) arranged to stiffen said side walls, wherein said stiffening element comprises a substantially flat stiffening wall spaced from the corresponding side wall, said stiffening wall having a first end positioned at the first edge and a second end positioned at the second edge.

20. In re claim 74, Rous discloses a container wherein said stiffening wall has a length substantially the same as a longitudinal dimension of said side wall, said length and said longitudinal dimension being measured parallel to said first edge.

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21. In re claim 75, Rous discloses a container further comprising a lid (20) hinged to the rear wall.

22. In re claim 76, Rous discloses a container further comprising an empty space, for contents of the container, defined by the front wall, rear wall and stiffening elements.

23. In re claim 78, Rous discloses a container wherein the first and second edges correspond to the lateral extremes of the empty space.

24. Claims 54-55, 59-61, 63 are rejected under 35 U.S.C. 102(b) as being anticipated by Frankenstein (USPN 2,603,405).

25. In re claim 54, Frankenstein discloses a foldable blank for forming a hinged-lid packet of cigarettes, comprising a first greater panel (33), a second greater panel (33), external panels (73) provided at opposite sides of said second greater panel, a longitudinal panel (73-75) and a further longitudinal panel (73-75) respectively arranged on opposite sides of said first greater panel parallel to said first greater panel, a pair of longitudinal strips (76) each having a longitudinal side in common respectively with said longitudinal panel or with said further longitudinal panel;

wherein said longitudinal panel and said further longitudinal panel are each subdivided into a first zone (73,74) having a side (35) in common with said first greater panel and a second zone (75) having a side (72) in common with the corresponding longitudinal strip;

a first longitudinal crease (71) separating said first zone from said second zone, a second longitudinal crease (72) separating said longitudinal strip from said second zone, wherein said first zone has a transverse extent and said second zone has a

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further transverse extent measured perpendicular to a longitudinal axis along which said longitudinal panel extends; and

wherein said first greater panel is interposed between a first transverse panel (38) and a second transverse panel (47) lying on opposite sides of said first greater panel along said longitudinal axis and wherein said first transverse panel and said second transverse panel extend parallel to said axis by a quantity substantially corresponding to said further transverse extent of said second zone.

26. In re claim 55, Frankenstein discloses a foldable blank wherein said transverse extent of said first zone has a transverse extent greater than said further transverse extent of said second zone.

27. In re claim 59, Frankenstein discloses a foldable blank wherein said first zone extends parallel to said first longitudinal crease for a length substantially the same as the length of said greater panel along said first longitudinal crease.

28. In re claim 60, Frankenstein discloses a foldable blank wherein said longitudinal crease is substantially parallel to said first longitudinal crease.

29. In re claim 61, Frankenstein discloses a foldable blank wherein said longitudinal strip has a longitudinal extent measured parallel to said second longitudinal crease substantially equal to said length of said second zone.

30. In re claim 63, Frankenstein discloses a foldable blank wherein said first zone is provided with a cutting line (87) that extends through said first zone in a tilted direction in relation to said first longitudinal crease.

Claim Rejections - 35 USC § 103

31. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

32. Claims 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rous USPN (USPN 3,722,783) in view Evans (USPN 2,028,276).

33. In re claim 46-48, Rous discloses the claimed invention except the shaped side wall comprising a convex wall that has a semi-cylindrical surface that extends around an axis substantially passing through said stiffening wall. However, Evans teaches a container having a shaped side wall (3) comprising a convex wall that has a semi-cylindrical surface that extends around an axis substantially passing through said stiffening wall (4). It would have been obvious to one of ordinary skill in the art to have changed the shape of the shaped side wall of Rous to include a convex wall as taught by Rous in order to give the an ornamental appearance to the likes of the consumer.

34. Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rous USPN (USPN 3,722,783) in view Rhodes (USPN 1,645,403).

35. In re claim 50, Rous discloses the claimed invention except the shaped side wall comprising a substantially flat intermediate portion and convex peripheral portions. Rhodes illustrates a shaped side wall comprising a substantially flat intermediate portion (10) and convex peripheral portions (5a,5b). It would have been obvious to one of ordinary skill in the art to have further modified the shaped side wall of Rous with a

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substantially flat intermediate portion and convex peripheral portions as a mere change in shape. No functional distinction is seen in the claimed shape as compared to the shape in Rous, nor has any such functional distinction been asserted by Applicant.

36. Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frankenstein (USPN 2,603,405) in view Rous (USPN 3,722,783).

37. In re claim 62, Frankenstein discloses the claimed invention except the longitudinal strip being trapezium-shaped. However, Rous teaches longitudinal strips (16b) being trapezium-shaped with a larger base being defined by a longitudinal crease (17) connecting another panel. It would have been obvious to one of ordinary skill in the art to have modified the shape of the longitudinal strip of Frankenstein with a trapezium-shape as taught by Rous as a mere change in shape. No functional distinction is seen in the claimed shape as compared to the shape in Frankenstein, nor has any such functional distinction been asserted by Applicant.

38. Claims 64-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frankenstein (USPN 2,603,405) in view Clarke (USPN 2,318,198).

39. In re claims 64-65, Frankenstein discloses the claimed invention except the further jointed cut line (82) extending in a direction tilted in a specular manner in relation to said cutting line. However, Clarke teaches a cut line at 18 in a tilted direction. It would have been obvious to one of ordinary skill in the art to have changed the direction of the jointed cut line of Frankenstein as taught by Clarke in order to change the direction in which the user folds the blank when forming the packet.

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40. Claims 66-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frankenstein (USPN 2,603,405) in view Campbell (USPN 5,097,948).

41. In re claims 66-67, Frankenstein discloses the claimed invention except a plurality of creases parallel to one another. However, Campbell teaches placing a plurality of creases in a panel for forming side walls of a container. It would have been obvious to one of ordinary skill in the art have included a plurality of creases closely placed parallel to one another on the blank of Frankenstein to promote a regular curve when forming the side walls of the container to form a different shape.

42. Claim 77 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rous USPN (USPN 3,722,783) in view Del Priore et al. (USPN 3,836,066).

43. In re claim 77, Rous discloses the claimed invention except the gap being symmetrical about a horizontal plane. However, Del Priore et al. teaches a container with a gap between a sidewall (50a) and a stiffening element (44a) that is symmetrical about a horizontal plane. It would have been obvious to one of ordinary skill in the art to have change the shape of the side wall of Rous to maintain a substantially symmetrical gap about a horizontal plane as taught by Del Priore et al. as a mere change in shape. No functional distinction is seen in the claimed shape as compared to the shape in Rous, nor has any such functional distinction been asserted by Applicant.

Response to Arguments

44. Applicant's arguments with respect to claim 54 have been considered but are moot in view of the new ground(s) of rejection.

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45. In response to applicant's argument that Rous does not teach or disclose a hinged lid packet for cigarettes, examiner does not agree. The packet of Rous does disclose a hinged lid at 20 which is hinged to the packet for sealing at the front wall 10.

46. Further, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Therefore, the claim is met as the packet of Rous is capable of containing cigarettes as well as the shape of a composition of cigarettes.

47. In response to applicant's argument that Rous does not teach or disclose a stiffening element extending from said first edge to said second edge, examiner does not agree. An intersection of two surfaces constitutes an edge, therefore the corner where the front wall 10 and shaped wall 16a meets is the first edge and the corner where the rear wall 12 and the edge of 16b meet is the second edge in which the stiffening element extends between.

48. In response to applicant's argument that the stiffening element of Rous is not substantially the same as a longitudinal dimension of said shaped side wall, examiner does not agree. The claim does not recite the stiffening element has the same longitudinal dimension of said shaped side wall. The claim recites that the stiffening element is "substantially" the same. Therefore, Rous meets the claim as the stiffening element 22 has a considerable longitudinal dimension in comparison to the shaped side wall.

Conclusion

49. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LATRICE BYRD whose telephone number is (571)270-5703. The examiner can normally be reached on Mon-Thu 9:30am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LATRICE BYRD/
Examiner, Art Unit 3782

/Gary E. Elkins/
Primary Examiner, Art Unit 3782